

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *JE* D.C.

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THOMAS H. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, MEMPHIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL R. SMITH,

Defendant.

No. 02-20380 B/V

ORDER DENYING DEFENDANT'S MOTION FOR BAIL
PENDING RESOLUTION OF APPEAL

Before the court is the pro se motion of the defendant, Michael R. Smith, pursuant to 18 U.S.C. § 3143(b), requesting that the court grant his application for bail pending resolution of an appeal that is currently before the Sixth Circuit Court of Appeals. This motion has been referred to the United States Magistrate Judge for determination. For the following reasons, the motion is denied.

On July 28, 2004, Michael Smith pled guilty to being a felon in possession of a firearm. The court sentenced Smith to 108 months imprisonment. Smith appealed this sentence, and the appeal is currently pending before the Sixth Circuit Court of Appeals.

Smith now seeks release pending resolution of his appeal pursuant to 18 U.S.C. § 3143(b). This section states:

(b) Release or detention pending appeal by the

defendant.--(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in-

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C § 3143.

The defendant fails to satisfy either prong of 18 U.S.C § 3143. At a bond hearing held before the District Court on August 25, 2003, Judge J. Daniel Breen made a determination that Smith posed a risk of flight and danger to the community. At a hearing before the undersigned Magistrate Judge on July 16, 2005, the defendant offered no new circumstances which would persuade this court to interfere with Judge Breen's previous findings. Furthermore, the defendant has failed to demonstrate that his appeal will result in any of the four conditions described under the second prong of 18 U.S.C. § 3143.

Accordingly, the defendant's motion for release on bail

pending resolution of his appeal is denied.

IT IS SO ORDERED this 22nd day of July, 2005.

A handwritten signature in cursive script, reading "Diane K. Vesco", is written over a horizontal line.

DIANE K. VESCOVO

UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 319 in case 2:02-CR-20380 was distributed by fax, mail, or direct printing on July 25, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT